IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU**
**&**
**THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

## WA.No. 1477 of 2007()

**AGAINST THE JUDGEMENT IN WPC.15898/2007 Dated 28/05/2007**
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APPELLANT/PETITIONER
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M/S.R.K.LATEX PVT.LTD.,
ANAMALAIS HOUSE ANNEXE,CHEMBUKAVU,
THRISSUR-680020,
REPRESENTED BY MR.D.DHARMARAJ,
SENIOR MANAGER (SALES).

BY SR. ADVOCATE SHRI ARSHAD HIDAYATHULLAH.
BY ADV. SRI.L.RAJESH NARAYAN
ADV. SRI.MANURAJ. K.J

RESPONDENT/RESPONDENT INWP(C):
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STATE OF KERALA REPRESENTED BY THE
SECRETARY TAXES,SECRETARIAT,TRIVANDRUM.

BY ADV. SRI.V.V. ASHOKAN, SPL.GOVERNMENT PLEADER (TAXES)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26/06/2007, ALONG WITH WA NOS. 1478 OF 2007, 1479 OF 2007 AND WA.NO. 1492 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L. DATTU, C.J. & K.T. SANKARAN, J.**

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**W.A. Nos.1477, 1478,1479**
**and 1492 of 2007**

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Dated this, the 26th day of June, 2007.

**JUDGMENT**

**H.L. DATTU, C.J.**

The assessees are registered dealers under the provisions of the Kerala General Sales Tax Act and Central Sales Tax Act. The assessees are engaged in the production of "centrifuged latex".

2. For the assessment year in question, the assessing authority had passed orders of assessment on the taxable turnover of the dealers in centrifuged latex. Aggrieved by the said order, the assessees were before the first Appellate Authority. The Appellate Authority had granted some reliefs to the assessees. The State, being aggrieved by the orders so passed by the first Appellate Authority, had carried the matter by way of second appeals before the Kerala Sales Tax Appellate Tribunal, Palakkad in appeal Nos. 38 of 2005, 39 of 2005, 357 of 2004 and 358 of 2004. The assessees also had filed cross objections before the Tribunal. The Tribunal by its order dated 14th June, 2006 had rejected one of the contentions canvassed by the Revenue. The Tribunal in its order had observed:

> "Since it is established that the decision in Kurian Abraham's case is no mere a good law, the contention of the appellant/Revenue that the respondent/assessee is not entitled for purchase tax exemption is without merit and

> liable to be dismissed. So the first contention of the appellant/State is found devoid of merit and dismissed and this issue is decided in favour of the respondent/assessee."

3. The Tribunal, being of the view that there is an error apparent on the face of the orders passed, had initiated proceedings under Section 43 of the Kerala General Sales Tax. The assessees had objected before the Tribunal after receiving the notice under Section 43 of the Act. However, the Tribunal by its order dated 22nd January, 2007, served on the assessees on 10.2.2007, has passed an order under Section 43 of the Act. The order passed by the Tribunal is as under:

> "The finding of this Tribunal that the decision of the Honourable High Court of Kerala in Kurian Abraham's case was no more a good law is incorrect. Hence the order of this Tribunal dated 14.6.2006 is rectified."

4. Aggrieved by the said order passed by the Tribunal, the assessees are before this Court in W.P.(C) Nos.15898, 15939, 15941 and 15942 of 2007. The primary contention that was canvassed by the assessees before this Court is that the Tribunal has exceeded its jurisdiction while passing the order under Section 43 of the Act.

5. The learned Government Pleader while appearing before the learned single Judge by way of preliminary objection had contended that if, for any reason, the assessees are aggrieved by the orders passed by the Tribunal under Section 43 of the Act, necessarily has to file revision petitions before this Court under Section 41(1) of the Act.

6. Learned single Judge, after considering the contention so canvassed, has disposed of the writ petitions and has directed the assessees to prefer revision petitions before this Court under Section 41 (1) of the Act within a particular time frame. Aggrieved by the orders and directions so issued by the learned single Judge, the assessees are before us in these appeals.

7. Sri.Arshad Hidayathullah, learned senior counsel appearing for the assessees, would submit that learned single Judge was not justified in rejecting the writ petitions and directing the assessees to prefer revision petitions before this Court. Learned counsel would further submit that under all circumstances this Court need not direct the assessees to prefer revision petitions under Section 41(1) of the Act, especially when it is urged and argued that the Tribunal while exercising its powers under Section 43 of the Act had exceeded its jurisdiction. The learned senior counsel would further submit, if for any reason, the learned Judge is of the view that the assessee's should be relegated to file a revision petition, at least what is expected is to frame an issue with regard to jurisdiction of the Tribunal and answer the same in one way or the other. Without doing so, the single Judge could not have passed the impugned order.

8. Sri.V.V.Ashokan, Special Government Pleader sought to justify the impugned orders passed by the learned single Judge.

9. One and the only question that requires our consideration and decision in these appeals is, whether learned single Judge was justified in disposing of the writ petitions and further directing the assessees to prefer revision petitions under Section 41(1) of the Act?

10. The issue that we have raised for our consideration and decision is now well settled by various High Courts and also the Supreme Court. The Supreme Court in one of its judgment has observed: "Where an authority acts without jurisdiction or patently in excess of its jurisdiction, it is quite proper to exercise the writ jurisdiction to set right the wrong".

11. The courts have also observed that the jurisdiction to rectify a mistake under Section 43 of the Act can be exercised by the Tribunal only if there is a mistake apparent on the face of the records. The High Court in a writ petition filed is entitled to see whether the Tribunal has properly exercised the jurisdiction vested in it. Therefore, since the petitioners are challenging the orders of rectification on the ground that the pre-requisites for exercise of jurisdiction under Section 43 was not existing and that therefore, the orders are without jurisdiction, the petitions had to be entertained on the merits and were not liable to be dismissed for availability of alternate remedy. At this stage, it may be relevant to observe that the jurisdiction to rectify a mistake under Section 43 can be exercised by the Tribunal only if there is a mistake apparent from the record. The High Court, in a writ petition, is entitled to see

whether the Tribunal has properly exercised the jurisdiction vested in it. When the authority concerned, instead of rectifying the mistake has reviewed its earlier order, the High Court would be justified in entertaining the writ petition against such order because, in such cases, the authority would have acted without jurisdiction. An alternate remedy by way of revision is no bar in such situations.

12. It was the specific case of the assessees before the learned single Judge that the Tribunal in the guise of rectifying a mistake apparent on the face of record has, in fact, reviewed the orders passed by it and the same is impermissible. In our view, the learned single Judge ought to have considered this aspect of the matter before rejecting the writ petitions and issuing a direction to the appellants/assessees to prefer revision petitions before this Court.

13. In view of the said legal position, we are of the opinion that the learned single Judge was not justified in rejecting the writ petitions and further directing the assessees to prefer revision petitions under Section 41(1) of the Act, if, for any reason, the assessees are aggrieved by the orders passed by the Tribunal in exercise of its power. Therefore, the following:

**O R D E R**

i) The writ appeals are allowed.

ii) The impugned order passed by the learned single Judge is

set aside and the matter is sent back to the learned single Judge to reconsider the matter in the light of the observations made by us in the course of our order.

iii) All the other contentions of both the parties are left open.

Ordered accordingly.

**H.L. DATTU,**
**CHIEF JUSTICE.**

**K.T. SANKARAN,**
**JUDGE.**

ahz/DK.